

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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GINARTE GALLARDO GONZALEZ &
WINOGRAD, LLP,

Plaintiff,

-against-

WILLIAM SCHWITZER, WILLIAM SCHWITZER
& ASSOCIATES, P.C., GIOVANNI C. MERLINO,
BARRY A. SEMEL-WEINSTEIN, BETH M.
DIAMOND, RENE G. GARCIA, THE GARCIA
LAW FIRM, P.C., MIGNOLIA PENA, AND
JANILDA GOMEZ,

Defendants.
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Index No. 159991/2018

**ANSWER, AFFIRMATIVE DEFENSES,
AND COUNTERCLAIM**

Defendants William Schwitzer & Associates, P.C. (“Schwitzer & Associates”), William Schwitzer, Giovanni C. Merlino, Barry A. Semel-Weinstein, and Beth M. Diamond (collectively, the “Schwitzer Defendants”), by and through their undersigned counsel, answer each according to their own knowledge the allegations contained in the unverified Complaint of Ginarte Gallardo Gonzalez & Winograd, LLP (“Ginarte”), and state their affirmative defenses, and counterclaim. Unless expressly admitted, all allegations in the Complaint are denied.

DEFENDANTS' INTRODUCTION

This lawsuit is a brazen and baseless attempt by the Ginarte firm to transform a routine commercial scenario—an unhappy client changing law firms—into a cudgel to falsely and shamelessly attack its archrival’s reputation. While a third of Ginarte’s size, Schwitzer & Associates has successfully grown into one of the most well-respected and successful law firms in the plaintiff’s personal injury arena in New York. Because Ginarte is unable to compete with the Schwitzer Defendants on a level playing field, it has instead tried to destroy its competitor by filing an unverified false pleading full of salacious and outrageous allegations (that have all been challenged by the alleged participants) of “pay to play”

ethics violations seemingly ripped from a pulp fiction crime novel, complete with a “briefcase full of cash” and a “Dr. X.” Tellingly, the unverified and conclusory pleading is hopelessly devoid of any supporting details—no clients, no contracts, no dates, and no times are identified—for a simple reason: it is an invented story designed to elicit maximum press exposure and destroy the Schwitzer Defendants’ professional reputation.

And damage has been done. Lawyers rise and fall on the virtue of their reputations—and Ginarte has trumpeted its false allegations to the *New York Post* and the *New York Law Journal*, who ran headline stories repeating Ginarte’s salacious allegations. This wholly unsubstantiated pleading has been damaging to the Defendants’ reputations and has raised concerns from their current and prospective clients.

Contrary to Ginarte’s malicious claim, clients who come to Schwitzer & Associates do so because it has achieved some of the largest verdicts in the State of New York as well as throughout the nation, and it advocates zealously for its clients based on its attorneys’ experience, dedication, and compassion. The proof is in the pudding: the Schwitzer Defendants have a booming practice, largely based on referrals from satisfied clients. Unlike Ginarte, Schwitzer & Associates’ success has nothing to do with sharp-elbowed practices and unethical publicity stunts that abuse the judicial system.

Ginarte’s relentless and unscrupulous campaign to ruin the Schwitzer Defendants’ reputation and strip them of their hard-fought professional success cannot stand. The Schwitzer Defendants, who have verified this answer, will not rest until this baseless litigation is thrown out.

SCHWITZER DEFENDANTS’ ANSWERS TO PLAINTIFF’S ALLEGATIONS

1. The allegations contained in Paragraph 1 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants deny the allegations contained in Paragraph 16.
2. The Schwitzer Defendants deny the allegations contained in Paragraph 2.
3. The Schwitzer Defendants deny the allegations contained in Paragraph 3.

4. The allegations contained in Paragraph 4 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants deny the allegations contained in Paragraph 4.

5. The Schwitzer Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5.

6. The Schwitzer Defendants admit the allegations contained in Paragraph 6.

7. The Schwitzer Defendants admit the allegations contained in Paragraph 7, except deny that Schwitzer & Associates' principal place of business is located at 112 Madison Avenue, New York, New York 10016.

8. Defendant Merlino admits the allegations contained in Paragraph 8. The remaining Schwitzer Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8.

9. Defendant Semel-Weinstein admits the allegations contained in Paragraph 9. The remaining Schwitzer Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9.

10. Defendant Diamond admits the allegations contained in Paragraph 10. The remaining Schwitzer Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10.

11. The Schwitzer Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11.

12. The Schwitzer Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12.

13. The Schwitzer Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13.

14. The Schwitzer Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14.

15. The allegations contained in Paragraph 15 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants admit that this Court has jurisdiction over this lawsuit.

16. The allegations contained in Paragraph 16 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants admit that venue is proper in New York County.

17. The Schwitzer Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17.

18. The Schwitzer Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18.

19. The Schwitzer Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19.

20. The Schwitzer Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20.

21. Mr. Schwitzer and Schwitzer & Associates deny the allegations in Paragraph 21, except admit that Mr. Schwitzer is an attorney who was admitted to practice law in 1985; that Dinkes & Schwitzer was formed in 2006; and that Schwitzer & Associates was formed in 2014. The remaining Schwitzer Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21.

22. The Schwitzer Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22, except aver that the court decision referred to in Paragraph 22 speaks for itself and respectfully refer the Court to that document for its full contents and meaning.

23. The Schwitzer Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 23, except aver that the court decision referred to in Paragraph 23 speaks for itself and respectfully refer the Court to that document for its full contents and meaning.

24. The Schwitzer Defendants admit the allegations contained in Paragraph 24.

25. The Schwitzer Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 25.

26. The Schwitzer Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26.

27. The Schwitzer Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 27, except aver that the court decision referred to in Paragraph 27 speaks for itself and respectfully refer the Court to that document for its full contents and meaning.

28. The Schwitzer Defendants deny the allegations contained in Paragraph 28, except admit that the Garcia Law Firm maintains an office space at 820 2nd Avenue, New York, NY 10017. The Schwitzer Defendants further aver that the allegations in Paragraph 28 concerning a “business relationship” are too vague to permit a response, and on that basis deny them.

29. The Schwitzer Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 29, except deny the allegations contained in Paragraph 29 that Ms. Pena is associated with and/or employed by the Schwitzer Law Firm.

30. The Schwitzer Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 30, except deny the allegations contained in Paragraph 30 that Ms. Gomez is associated with and/or employed by the Schwitzer Law Firm.

31. The Schwitzer Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 31.

32. The Schwitzer Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 32, except aver that the substitution letters referred to in Paragraph 32 speak for themselves and respectfully refer the Court to those documents for their full contents and meaning.

33. The Schwitzer Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 33, except aver that the substitution letters referred to

in Paragraph 33 speak for themselves and respectfully refer the Court to those documents for its full contents and meaning.

34. The Schwitzer Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 34.

35. The Schwitzer Defendants deny the allegations contained in Paragraph 35 as to the Schwitzer Defendants, and lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 35 as to the other co-Defendants.

36. The Schwitzer Defendants deny the allegations contained in Paragraph 36 as to the Schwitzer Defendants, and lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 36 as to the other co-Defendants.

37. The Schwitzer Defendants deny the allegations contained in Paragraph 37 as to the Schwitzer Defendants, and lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 37 as to the other co-Defendants.

38. The Schwitzer Defendants deny the allegations contained in Paragraph 38 as to the Schwitzer Defendants, and lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 38 as to the other co-Defendants.

39. The allegation in Paragraph 39 refers only to Defendant Mr. Schwitzer, and Defendant Mr. Schwitzer denies the allegations contained in Paragraph 39. The remaining Schwitzer Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 39.

40. The allegation in Paragraph 40 refers only to Defendant Schwitzer, and Defendant Schwitzer denies the allegations contained in Paragraph 40. The remaining Schwitzer Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 40.

41. The Schwitzer Defendants deny the allegations contained in Paragraph 41 as to the Schwitzer Defendants, and lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 41 as to the other co-Defendants.

42. The Schwitzer Defendants deny the allegations contained in Paragraph 42 as to the Schwitzer Defendants, and lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 42 as to the other co-Defendants.

43. The Schwitzer Defendants incorporate by reference their responses to Paragraphs 1 through 42 set forth above.

44. The Schwitzer Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 44.

45. The Schwitzer Defendants deny the allegations contained in Paragraph 45. The Schwitzer Defendants further aver that the allegation in Paragraph 45 concerning unspecified "Clients" is too vague to permit a response.

46. The Schwitzer Defendants deny the allegations contained in Paragraph 46 as to the Schwitzer Defendants, and lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 46 as to the other co-Defendants. The Schwitzer Defendants further aver that the allegation in Paragraph 46 concerning unspecified "Clients" is too vague to permit a response.

47. The allegations contained in Paragraph 47 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants deny the allegations contained in Paragraph 47 as to the Schwitzer Defendants. The Schwitzer Defendants further aver that the allegation in Paragraph 47 concerning unspecified "Clients" is too vague to permit a response.

48. The allegations contained in Paragraph 48 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 48.

49. The allegations contained in Paragraph 49 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants deny the allegations contained in Paragraph 49 as to the Schwitzer Defendants, and otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 49.

50. The allegations contained in Paragraph 50 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants deny the allegations contained in Paragraph 50 as to the Schwitzer Defendants, and otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 50.

51. The Schwitzer Defendants incorporate by reference their responses to Paragraphs 1 through 50 set forth above.

52. The allegations contained in Paragraph 52 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants deny the allegations contained in Paragraph 52.

53. The allegations contained in Paragraph 53 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants deny the allegations contained in Paragraph 53.

54. The Schwitzer Defendants incorporate by reference their responses to Paragraphs 1 through 53 set forth above.

55. The allegations contained in Paragraph 55 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants deny the allegations contained in Paragraph 55 as to the Schwitzer Defendants, and otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 55. The Schwitzer Defendants further aver that the allegation in Paragraph 55 concerning unspecified "Clients" is too vague to permit a response.

56. The allegations contained in Paragraph 56 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants deny the allegations contained in Paragraph 56.

57. The allegations contained in Paragraph 57 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants deny the allegations contained in Paragraph 57.

58. The allegations contained in Paragraph 58 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants deny the allegations contained in Paragraph 58.

59. The allegations contained in Paragraph 59 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants deny the allegations contained in Paragraph 59 as to the Schwitzer Defendants, and otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 59.

60. The allegations contained in Paragraph 60 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants deny the allegations contained in Paragraph 60.

61. The allegations contained in Paragraph 61 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants deny the allegations contained in Paragraph 61 as to the Schwitzer Defendants.

62. The Schwitzer Defendants incorporate by reference their responses to Paragraphs 1 through 61 set forth above.

63. The allegations contained in Paragraph 63 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants deny the allegations contained in Paragraph 63.

64. The allegations contained in Paragraph 64 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants deny the allegations contained in Paragraph 64.

65. The allegations contained in Paragraph 65 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants deny the allegations contained in Paragraph 65.

66. The allegations contained in Paragraph 66 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants deny the allegations contained in Paragraph 66.

67. The Schwitzer Defendants incorporate by reference their responses to Paragraphs 1 through 66 set forth above.

68. The allegations contained in Paragraph 68 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants deny the allegations contained in Paragraph 68.

69. The allegations contained in Paragraph 69 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants deny the allegations contained in Paragraph 69.

70. The allegations contained in Paragraph 70 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants deny the allegations contained in Paragraph 70.

71. The allegations contained in Paragraph 71 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants deny the allegations contained in Paragraph 71.

72. The allegations contained in Paragraph 72 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants deny the allegations contained in Paragraph 72.

73. The allegations contained in Paragraph 73 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants deny the allegations contained in Paragraph 73.

74. The allegations contained in Paragraph 74 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants deny the allegations contained in Paragraph 74.

75. The Schwitzer Defendants incorporate by reference their responses to Paragraphs 1 through 74 set forth above.

76. The allegations contained in Paragraph 76 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants deny the allegations contained in Paragraph 76.

77. The allegations contained in Paragraph 77 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants deny the allegations contained in Paragraph 77.

78. The allegations contained in Paragraph 78 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants deny the allegations contained in Paragraph 78.

79. The allegations contained in Paragraph 79 are legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations contained in Paragraph 79.

80. The allegations contained in Paragraph 80 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants deny the allegations contained in Paragraph 80.

81. The allegations contained in Paragraph 81 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants deny the allegations contained in Paragraph 81.

82. The allegations contained in Paragraph 82 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants deny the allegations contained in Paragraph 82.

83. The allegations contained in Paragraph 83 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants deny the allegations contained in Paragraph 83.

84. The Schwitzer Defendants incorporate by reference their responses to Paragraphs 1 through 83 set forth above.

85. The allegations contained in Paragraph 85 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants deny the allegations contained in Paragraph 85.

86. The allegations contained in Paragraph 86 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants deny the allegations contained in Paragraph 86.

87. The allegations contained in Paragraph 87 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants deny the allegations contained in Paragraph 87.

88. The Schwitzer Defendants incorporate by reference their responses to Paragraphs 1 through 87 set forth above.

89. The Schwitzer Defendants deny the allegations contained in Paragraph 89 as to the Schwitzer Defendants.

90. The Schwitzer Defendants deny the allegations contained in Paragraph 90 as to the Schwitzer Defendants, and lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 90 regarding whether Ginarte "originated" the referenced unnamed clients and matters.

91. The Schwitzer Defendants deny the allegations contained in Paragraph 91 as to the Schwitzer Defendants, and lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 91 regarding referenced unnamed clients and matters.

92. The Schwitzer Defendants deny the allegations contained in Paragraph 92 as to the Schwitzer Defendants.

93. The Schwitzer Defendants deny the allegations contained in Paragraph 93 as to the Schwitzer Defendants.

94. The allegations contained in Paragraph 94 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants deny the allegations contained in Paragraph 94 as to the Schwitzer Defendants.

95. The allegations contained in Paragraph 95 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants deny the allegations contained in Paragraph 95 as to the Schwitzer Defendants.

96. The allegations contained in Paragraph 96 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants deny the allegations contained in Paragraph 96 as to the Schwitzer Defendants.

97. The allegations contained in Paragraph 97 are legal conclusions to which no response is required. To the extent a response is required, the Schwitzer Defendants deny the allegations contained in Paragraph 97.

98. With respect to the paragraphs of the Complaint that comprise Plaintiff's prayer for relief, the Schwitzer Defendants deny the allegations set forth therein.

AFFIRMATIVE DEFENSES

99. The statement of any defense hereinafter does not assume the burden of proof for any issue as to which applicable law places the burden upon Plaintiff. In addition, the Schwitzer Defendants presently have insufficient information upon which to form a belief as to whether the Schwitzer Defendants may have additional, as yet unstated, separate defenses available. The Schwitzer Defendants

expressly reserve the right to amend this Answer to add, supplement, or modify their affirmative defenses and other defenses based upon legal theories that may be divulged through clarification of the Complaint, through discovery, or through further legal analysis of Plaintiff's allegations, contentions, and positions in this litigation.

FIRST AFFIRMATIVE DEFENSE

100. The Complaint and each purported cause of action therein fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

101. The Complaint is barred in whole or in part by the doctrines of inequitable conduct and unclean hands.

THIRD AFFIRMATIVE DEFENSE

102. Plaintiff's claims are barred in whole or in part because Plaintiff has not suffered any injury or damage as a result of any act, conduct, or omission by Defendants, or its damages are too speculative to support a claim, and therefore Plaintiff is not entitled to any relief from the Schwitzer Defendants.

FOURTH AFFIRMATIVE DEFENSE

103. There is no causal relationship between the losses alleged, if any, and any alleged wrongful acts by the Schwitzer Defendants.

FIFTH AFFIRMATIVE DEFENSE

104. Plaintiff's claims are barred in whole or in part because even if Plaintiff's allegations were true, which the Schwitzer Defendants deny, the damages alleged by Plaintiff in the Complaint are too speculative to give rise to any of the causes of actions alleged by Plaintiff in the Complaint.

SIXTH AFFIRMATIVE DEFENSE

105. Plaintiff's claims are barred and/or must be reduced in whole or in part by the doctrine of setoff because any loss or damage suffered by Plaintiff must be reduced in whole or in part because of legal claims that the Schwitzer Defendants have against Plaintiff.

SEVENTH AFFIRMATIVE DEFENSE

106. Plaintiff's claims are barred in whole or in part by the doctrine of unjust enrichment, because Plaintiff would be unjustly enriched were it allowed to recover any relief claimed to be due.

EIGHTH AFFIRMATIVE DEFENSE

107. Plaintiff's claims are barred in whole or in part because even if Plaintiff's allegations were true, which the Schwitzer Defendants deny, to the extent Plaintiff has suffered damages as alleged in the Complaint, such damages were not caused by the Schwitzer Defendants, but by the acts or omissions of Plaintiff and/or her agent(s) or others, and/or by circumstances for which the Schwitzer Defendants are not legally responsible.

NINTH AFFIRMATIVE DEFENSE

108. Plaintiff's claims are barred in whole or in part because the statements complained of are paraphrased and not plead with enough specificity to determine whether they constitute misrepresentations or defamatory statements.

TENTH AFFIRMATIVE DEFENSE

109. Plaintiff's claims are barred in whole or in part because the statements complained of therein constituted non-actionable statements of opinion.

ELEVENTH AFFIRMATIVE DEFENSE

110. Plaintiff's claims are barred in whole or in part due to Plaintiff's and/or its agent(s)' own misrepresentations and/or omissions.

TWELFTH AFFIRMATIVE DEFENSE

111. To the extent that Plaintiff is entitled to any relief, Plaintiff is not entitled to equitable relief because it has an adequate remedy at law.

THIRTEENTH AFFIRMATIVE DEFENSE

112. To the extent Claimant seeks punitive damages, Plaintiff fails to set forth facts sufficient to constitute a claim for punitive or exemplary damages in that the Schwitzer Defendants did not act with

malice, fraud, oppression, or any other state sufficient to sustain punitive or exemplary damages with respect to Plaintiff.

* * *

COUNTERCLAIM

1. The Schwitzer Defendants, by their attorneys, Gibson, Dunn & Crutcher LLP, for their counterclaim in this Action, hereby allege as follows:

PARTIES AND JURISDICTION

2. William Schwitzer & Associates, P.C. ("Schwitzer & Associates") is a New York-based law firm specializing in personal injury representations. It has been recognized by the *National Law Journal*, *Top Verdicts*, and the *American Institute of Personal Injury Attorneys* as among the best personal injury firms in the country. It has collected over a billion dollars in verdicts and settlements for its clients. Schwitzer & Associates currently consists of eight attorneys and a single Manhattan office.

3. The firm's name partner, William Schwitzer, has over three decades of trial experience, and has been a *Super Lawyers* top-ranked attorney since 2006.

4. Defendants Giovanni C. Merlino, Barry A. Semel-Weinstein, and Beth M. Diamond are associates at Schwitzer & Associates.

5. Ginarte is also a New York-based law firm specializing in personal injury law. It is substantially larger than Schwitzer & Associates, with over 30 attorneys across seven offices in New York and New Jersey. In its Complaint, it bragged of an advertising budget in the millions of dollars.

STATEMENT OF FACTS

6. On or about October 29, 2018, the Schwitzer Defendants received a Summons and unverified Complaint, informing them that they were the subject of a lawsuit brought by a competing law firm, Ginarte. The Schwitzer Defendants were outraged by the flagrant lies within the Complaint, which did not just distort the facts, but made up allegations whole cloth.

7. The Schwitzer Defendants were especially bewildered by the inclusion of Janilda Gomez and Mignolia Pena as co-Defendants, with whom none of the Schwitzer Defendants could recall ever meeting or speaking. Ms. Gomez and Ms. Pena have submitted sworn affidavits, attached hereto as Exhibits A and B, denying any association with the Schwitzer Defendants and denying all knowledge of the allegations contained in the Complaint.

8. That same day, the *New York Post* reached out to Schwitzer & Associates to comment on the lawsuit. On information and belief, Ginarte fed its Complaint to the New York Post as part of its effort to maximize public exposure of Ginarte's damaging lies. Though Schwitzer & Associates flatly denied the accusations, on October 30, 2018, the *New York Post* ran a salacious article detailing Ginarte's fabricated allegations. (The *New York Post* article is attached hereto as Exhibit C).

9. On November 1, 2018, the *New York Law Journal* ran an article entitled, "Personal Injury Firm Claims Rivals Lured Away Clients With 'Briefcase Full of Cash.'" Ginarte's counsel provided a further comment to the *New York Law Journal* reporter that Ginarte had reported their allegations to "the appropriate authorities." (The *New York Law Journal* is attached hereto as Exhibit D).

10. In the time since the *New York Post* and *New York Law Journal* articles ran, several colleagues at firms within the Schwitzer Defendants' industry have reached out to ask about the Complaint, and to question whether it has merit. Several Schwitzer & Associates clients have similarly expressed concern about Ginarte's allegations. Despite being an obvious lie, the Complaint has done exactly what Ginarte hoped it would—permanent damage to the Schwitzer Defendants' professional reputation.

11. Ginarte's malicious motivation is clear from its Complaint. Increasingly, clients have recognized the value of the services Schwitzer & Associates provides and have chosen it over Ginarte. Ginarte filed this action, and then fed its fabricated story to the press in order to damage the Schwitzer Defendants' professional reputation and credibility and to hinder its ability to attract new clients, all to the benefit of Ginarte.

**COUNTERCLAIM
(DEFAMATION PER SE)**

12. The Schwitzer Defendants incorporate and re-allege the allegations contained in Paragraphs 1 through 11 hereof as if fully set forth herein.

13. Each and every one of Ginarte's causes of action is based upon outlandish and damaging lies that Ginarte knew were false at the time it filed its Complaint, as evidenced by its feeding its

Complaint to the press, despite the fact that Ginarte failed to plead any factual support for its outrageous and obviously false accusations.

14. These allegations of dishonest and unethical behavior, including, but not limited to, that the Schwitzer Defendants bully potential clients with “high-pressure sales tactics and persuasion,” Complaint (“Compl.”) ¶ 37, that Schwitzer & Associates refinances its clients’ litigation debt at a higher interest rate for the client, Compl. ¶ 38, that it keeps a “briefcase full of cash” to pay its clients to accept its representation, Compl. ¶ 39, and that it is engaged in a “coordinated scheme involving classic ambulance-chasing tactics,” ¶ 49, all maliciously target the Schwitzer Defendants’ professional reputation by portraying them as dishonest thugs, and therefore constitute defamation per se.

15. Ginarte’s filing of a Complaint that fails to come close to stating even a single valid claim, and instead is filled with vague and conclusory lies, unnamed conspirators, unnamed clients, and zero factual support, demonstrates that the Complaint is nothing but a sham designed to defame the Schwitzer Defendants in the press and is therefore not entitled to judicial privilege.

16. Ginarte’s promotion of its false story to the *New York Post*, Ex. C, and *New York Law Journal*, Ex. D, is further evidence of its express malice towards Defendants.

17. In addition, in Paragraph 35 of its unverified Complaint, Ginarte states that unspecified Defendants working in conjunction with the Schwitzer Defendants would “advise the client to ‘always tell the doctors that you’re in pain.’” This untrue accusation of dishonest and unethical behavior strikes at Defendants’ hard-earned professional reputation and therefore constitutes defamation per se.

18. This accusation is entirely immaterial and irrelevant to each and every one of Ginarte’s claims and the only possible motivation for it is to harm the Schwitzer Defendants’ professional reputation.

19. Therefore, Ginarte’s accusation that the Schwitzer Defendants direct their clients to “always tell the doctors that you’re in pain” is not protected by any judicial privilege.

20. As a result, the Schwitzer Defendants have been damaged in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing, the Schwitzer Defendants respectfully request the following relief:

- A. A judgment in favor of the Schwitzer Defendants' Counterclaim and dismissing all of Plaintiff's Claims;
- B. An award of compensatory damages to the Schwitzer Defendants in an amount to be determined at trial;
- C. An award of punitive damages to the Schwitzer Defendants in an amount to be determined at trial;
- D. Such further relief as this Court deems just and proper, including costs and disbursements for this action.

Dated: February 7, 2019
New York, NY

Respectfully submitted,
GIBSON, DUNN & CRUTCHER LLP

By: /s/ Randy M. Mastro
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200 Park Avenue
New York, NY 10166-0193
Telephone: 212.351.4000
Attorneys for Defendants

**VERIFICATION OF WILLIAM SCHWITZER
ON BEHALF OF HIMSELF AS A NAMED DEFENDANT**

WILLIAM SCHWITZER, being duly sworn, deposes and says under penalty of perjury pursuant to CPLR 3020, that the following is true and correct:

3. I am the named partner of William Schwitzer & Associates, P.C., a New York-based law firm specializing in personal injury representations.

4. On behalf of myself as a named defendant, I have reviewed the foregoing Answer and Counterclaim and know the contents thereof. The same are true to my knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters, I believe them to be true.

Dated: New York, New York
February 6, 2019

William Schwitzer

State of: New York
County of: Kings

Sworn to me this 6 day of February 2019.

Kristina Salavato
NOTARY PUBLIC

KRISTINA SALAVATOVA
Notary Public, State of New York
Reg. No. 015A6372553
Qualified in Kings County
Commission Expires 03/19/20 22

**VERIFICATION OF WILLIAM SCHWITZER
ON BEHALF OF WILLIAM SCHWITZER & ASSOCIATES, P.C.**

WILLIAM SCHWITZER, being duly sworn, deposes and says under penalty of perjury pursuant to CPLR 3020, that the following is true and correct:

1. I am the named partner of William Schwitzer & Associates, P.C., a New York-based law firm specializing in personal injury representations.
2. On behalf of William Schwitzer & Associates, P.C., I have reviewed the foregoing Answer and Counterclaim and know the contents thereof. The same are true to my knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters, I believe them to be true.

Dated: New York, New York
February 6, 2019

William Schwitzer

State of: New York
County of: Kings

Sworn to me this 6 day of February 2019.

Kristina Salavato
NOTARY PUBLIC

KRISTINA SALAVATOVA
Notary Public, State of New York
Reg. No. 015A6372553
Qualified in Kings County
Commission Expires 03/19/20 22

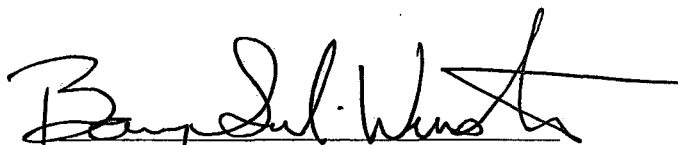
VERIFICATION OF BARRY AARON SEMEL-WEINSTEIN

BARRY A. SEMEL-WEINSTEIN, being duly sworn, deposes and says under penalty of perjury pursuant to CPLR 3020, that the following is true and correct:

7. I am an associate of William Schwitzer & Associates, P.C., a New York-based law firm specializing in personal injury representations.

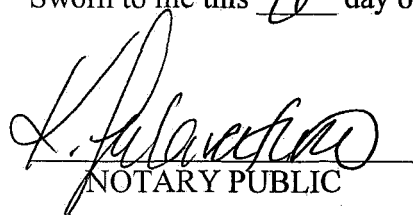
8. I have reviewed the foregoing Answer and Counterclaim and know the contents thereof. The same are true to my knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters, I believe them to be true.

Dated: New York, New York
February 6, 2019



State of: New York
County of: Kings

Sworn to me this 10 day of February 2019.


NOTARY PUBLIC

KRISTINA SALAVATOVA
Notary Public, State of New York
Reg. No. 016A6372563
Qualified in Kings County
Commission Expires 03/19/20 22

VERIFICATION OF GIOVANNI C. MERLINO

GIOVANNI C. MERLINO, being duly sworn, deposes and says under penalty of perjury pursuant to CPLR 3020, that the following is true and correct:

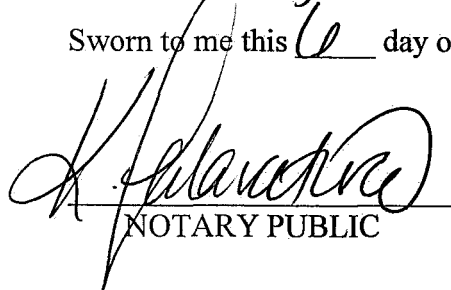
5. I am an associate of William Schwitzer & Associates, P.C., a New York-based law firm specializing in personal injury representations.

6. I have reviewed the foregoing Answer and Counterclaim and know the contents thereof. The same are true to my knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters, I believe them to be true.

Dated: New York, New York
February 6, 2019

State of: New York
County of: Kings

Sworn to me this 6 day of February 2019.


NOTARY PUBLIC

KRISTINA SALAVATOVA
Notary Public, State of New York
Reg. No. 015A6372553
Qualified in Kings County
Commission Expires 03/19/20 22

VERIFICATION OF BETH MICHELLE DIAMOND

BETH M. DIAMOND, being duly sworn, deposes and says under penalty of perjury pursuant to CPLR 3020, that the following is true and correct:

9. I am an associate of William Schwitzer & Associates, P.C., a New York-based law firm specializing in personal injury representations.

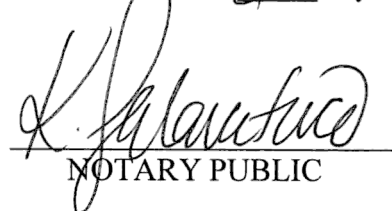
10. I have reviewed the foregoing Answer and Counterclaim and know the contents thereof. The same are true to my knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters, I believe them to be true.

Dated: New York, New York
February 6, 2019



State of: New York
County of: Kings

Sworn to me this 6 day of February 2019.


NOTARY PUBLIC

KRISTINA SALAVATOVA
Notary Public, State of New York
Reg. No. 015A5372553
Qualified in Kings County
Commission Expires 03/19/20 22

VERIFICATIONS.DOCX